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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

COLLEEN M. WENSLEY,

Plaintiff,

vs.

FIRST NATIONAL BANK OF NEVADA;  
STEWART TITLE COMPANY; NATIONAL  
DEFAULT SERVICING CORPORATION;  
AMERICA'S SERVICING COMPANY;  
CHICAGO DEFAULT SERVICES; STANLEY S.  
SILVA; and DOES 1-25 CORPORATIONS, DOES  
and ROES 1-25 Individuals, Partnerships, or anyone  
claiming any interest to the property described in  
the action,

Defendants.

Case No.

**DEFENDANT STANLEY S.  
SILVA'S PETITION FOR  
REMOVAL**

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF NEVADA:

Defendant STANLEY S. SILVA ("Silva") respectfully shows that he is removing the  
above-entitled action to this Court pursuant to 28 U.S.C. §1441(a-c) because Plaintiff pleads  
causes of action under the Federal Truth in Lending Act, 15 U.S.C. § 1692 et. seq.:

1. Silva is a defendant in the above-entitled action in the Second Judicial District  
Court, Washoe County, Nevada ("State Court").

2. On September 27, 2011, Plaintiff filed a Complaint in State Court as Case No.  
CV11-028508. *See*, Exhibit A.

3. On October 20, 2011, Plaintiff allegedly served Silva. *See*, Exhibit B.

4. Because no other defendants have been served at this time, consent is not needed

1 from those named defendants. Counsel for Silva to date has attempted to ascertain the identity of  
 2 counsel for co-defendants. As no other co-defendants have answered or otherwise made an  
 3 appearance in the State Court, counsel has been unable to determine the remaining defendants'  
 4 position regarding joinder of this Petition for Removal.

5 5. This case centers on Plaintiff's purchase of property at 1181 Harbor Cove Court,  
 6 Sparks, Nevada 89434.

7 6. Plaintiff contends that she is the victim of unlawful actions pursuant to 15 U.S.C.  
 8 § 1692 et. seq. (*see* Complaint, ¶¶70, 71 and 72). Thus, this Petition is proper under 28 U.S.C.  
 9 §§ 1441 (b), which states:

10 **28 U.S.C. §§ 1441 (b)** Any civil action of which the district courts have original  
 11 jurisdiction founded on a claim or right arising under the Constitution, treaties or  
 12 laws of the United States shall be removable without regard to the citizenship or  
 13 residence of the parties. Any other such action shall be removable only if none of  
 the parties in interest properly joined and served as defendants is a citizen of the  
 State in which such action is brought.

14 Further, Plaintiff has alleged that NRS 649.370 was violated by the Defendants (*see*  
 15 Complaint, ¶69). This court stated in *Ahmadi v. First Horizon Home Loan Corp.*; 2011 WL  
 16 1303261:

17 "Plaintiff has pled a cause of action for a violation of NRS section 649.370, which  
 18 incorporates the standards of the Fair Debt Collection Practices Act ("FDCPA").  
 19 Section 649.370 creates no private cause of action, so the claim that refers to  
 20 FDCPA necessarily relies directly on the federal cause of action. Even if the  
 Court found an implied state cause of action, it would necessarily require  
 substantial interpretation of federal law, because a violation of the state statute is  
 defined purely by reference to FDCPA". (internal citations omitted).

21 7. Since a Federal question is at issue, venue is proper in this Federal Court.

22 8. Thirty days has not elapsed from the time Plaintiff served Silva. Thus, this  
 23 Petition for Removal is timely and proper under 28 U.S.C. § 1446(b).

24 (b) The notice of removal of a civil action or proceeding shall be filed within  
 25 thirty days after the receipt by the defendant, through service or otherwise, of a  
 26 copy of the initial pleading setting forth the claim for relief upon which such  
 27 action or proceeding is based, or within thirty days after the service of summons  
 upon the defendant if such initial pleading has then been filed in court and is not  
 required to be served on the defendant, whichever period is shorter.

28 9. This action may be properly removed to this Court under 28 U.S.C. §1441(a-c).

10. Copies of all process, pleadings and other orders served upon the removing defendant are attached hereto as Exhibits A, B, and C.

11. A true and correct copy of this Petition for Removal will be provided to the Plaintiff and filed with the Clerk of the Second Judicial District Court of the State of Nevada, Department I.

12. Silva reserves the right to amend or supplement this Petition for Removal.

WHEREFORE, Defendants pray that this action be removed.

DATED this 9<sup>th</sup> day of November, 2011. FIDELITY NATIONAL LAW GROUP

/s/ Thomas A. Ryan

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### CERTIFICATE OF SERVICE

I hereby certify that I electronically transmitted the foregoing **PETITION FOR REMOVAL** to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all parties listed as CM/ECF registrants, or to the following non-registrants by U.S. Mail, on the date below shown.

Rick Lawton, Esq.  
1460 Hwy 95A, North #1  
Fernley, NV 89408  
Attorney for Plaintiffs

DATED: November 9, 2011

/s/ Jennifer O'Brien

An employee of Fidelity National Law Group